

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 4:15-CR-49-CDP  
 )  
 RAMIZ ZIJAD HODZIC, )  
 SEDINA UNKIC HODZIC, )  
 NIHAD ROSIC, )  
 MEDIHA MEDY SALKICEVIC, )  
 ARMIN HARCEVIC, )  
 )  
 Defendants. )

STATUS CONFERENCE

BEFORE THE HONORABLE DAVID D. NOCE  
UNITED STATES MAGISTRATE JUDGE

JANUARY 28, 2019

APPEARANCES:

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APPEARANCES CONTINUED ON PAGE 2

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(Produced by computer-aided mechanical stenography.)

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1 (Proceedings commenced at 2:10 p.m.)

2 (The following proceedings were held in open court and  
3 with the Defendants present.)

4 THE COURT: In the case of the United States against  
5 Ramiz Zijad Hodzic, Sedina Unkic Hodzic, Nihad Rosic, Mediha  
6 Medy Salkicevic, and Armin Harcevic, Case No. 4:15-CR-49, the  
7 matter is before the Court this afternoon for a hearing on a  
8 couple of matters, the first being a taking of the comments  
9 from counsel about the status of the case.

10 First of all, let me acknowledge also that here  
11 representing the United States is Howard Marcus, Mr. Drake,  
12 Matthew Drake, and Joshua Champagne. Here representing  
13 Mr. Hodzic is Diane Dragan. Here representing Mrs. Hodzic is  
14 Kim Freter and Daniel Schattnik. Here representing Nihad  
15 Rosic is JoAnn Trog. Oh, there she is. And representing  
16 Ms. Salkicevic is Joan Miller. And Charles Swift is here  
17 representing -- let me see here -- Armin Harcevic.

18 All right. The first thing I want to ask about is  
19 the status of discovery again. Mr. Drake, can you give me the  
20 report on whether or not there's been any other disclosure of  
21 information to the defense since the last time I asked you  
22 that question?

23 MR. DRAKE: Certainly, Your Honor. Thank you. And  
24 good afternoon. Not since the last time we met, but there  
25 will be today, Judge. We have a disc which has some

1 additional Bosnia-to-English translations of the underlying  
2 evidence and materials. The Government is also disclosing the  
3 interviews that we mentioned in our last hearing of Jasmin  
4 Jaservitch, who is a witness that is the subject of the  
5 depositions we're about to talk about. The Government had  
6 interviewed him previously and promised the defense we would  
7 turn over his interview in advance of the depositions, and  
8 we're doing that today. It also has just some miscellaneous  
9 discovery that we've come up with that has previously not been  
10 turned over, a couple of minor surveillance reports, things  
11 like that, but, again, we're just continuing with our ongoing  
12 discovery obligations, but as I've represented to the Court,  
13 the vast majority, the bulk of the material, has previously  
14 been turned over, Judge.

15 THE COURT: All right. And that includes material  
16 that you intend -- that you would intend or would offer into  
17 evidence at trial?

18 MR. DRAKE: Yes, Judge.

19 THE COURT: Okay. And so, substantially, you have  
20 performed your duty in providing information to the defense?

21 MR. DRAKE: Yes, Judge. I mean, yes, Your Honor, is  
22 the quick and easy answer. As stuff comes to our attention,  
23 there have been a couple additional media materials or  
24 something that we might have found that we think is relevant  
25 but maybe we wouldn't even use at trial but we think is

1 arguably relevant, and we're continuing that obligation and  
2 turning those things over.

3 THE COURT: All right. And also, before I forget,  
4 all of the Defendants who remain in the case are present in  
5 the courtroom. Is that a fair statement?

6 MR. DRAKE: Yes, Judge.

7 THE COURT: All right. Let me ask you; on a second  
8 matter, just to make the record clear, you have disclosed to  
9 defense counsel the Government's offers for guilty plea  
10 agreements. Is that a fair statement?

11 MR. DRAKE: Yes, Judge. And if you wouldn't mind  
12 permitting me an opportunity to elaborate on that, we have  
13 entered into resolution discussions with all Defendants.  
14 Those have gone through many iterations. New counsel has been  
15 appointed as recently as our last meeting, Judge, for at least  
16 one of the Defendants, and in just informal conversations,  
17 I've indicated that we have extended plea offers, and I was  
18 working under the presumption that prior counsel had passed  
19 those offers along.

20 As the Court is well aware, there's been mention a  
21 number of times of a superseding indictment, and the  
22 Government has -- has forgone seeking that indictment at the  
23 request of the defense because of trying to resolve the issue  
24 of lawful combatant immunity. The theory was that depending  
25 on how the Court might rule on those issues, there may or may

1 not be a need for the superseding indictment. I think that  
2 we're quickly at a point where that no longer matters. So the  
3 United States would anticipate seeking that superseding  
4 indictment sometime in the near future. Obviously, if the  
5 lawful combatant immunity matter is resolved against the  
6 United States, it wouldn't matter anyway. If it's resolved in  
7 favor of the United States, it would matter. And the reason I  
8 bring that to the Court's attention is because the Government  
9 would seek to request of the District Court *Frye* hearings in  
10 the matter, and we do that because if the Government were to  
11 supersede, an additional count would be levied against each of  
12 the Defendants. The Government would not -- it would  
13 substantially change the nature of the plea offers that would  
14 be available and offered by the Government. In other words,  
15 the Defendants would be foreclosed from pleading then to what  
16 they could plead to now, and the Government would seek that  
17 *Frye* hearing before the superseding indictment to make clear  
18 to the Defendants what's going on and why we have forestalled  
19 seeking that indictment, Judge, and that's the status of where  
20 we are with resolution negotiations.

21 THE COURT: All right. And I also want to make clear  
22 that there are interpreters, Bosnian interpreters, in the  
23 courtroom to provide services to any Defendant who needs them,  
24 and I'm advised that none of the Defendants have felt a need  
25 to use the services of the interpreters today. Is that a fair

1 statement?

2 I think I see all defense counsel shaking their heads  
3 yes.

4 All right. I just want to be sure. All right.  
5 Thank you very much.

6 MR. DRAKE: Thank you, Judge.

7 THE COURT: All right. Ms. Dragan, let me ask you;  
8 in the progress of the disclosure of information, the defense  
9 has submitted its copies of the discovery in foreign languages  
10 to interpreters. Is that a fair statement?

11 MS. DRAGAN: We have submitted parts of the discovery  
12 to interpreters. We haven't submitted everything. So we've  
13 made some choices about what we wanted interpreted first and  
14 submitted that.

15 THE COURT: All right. And are you satisfied with  
16 the extent of that process on behalf of your client?

17 MS. DRAGAN: It was extremely slow, and I was not the  
18 person directly in charge. Maybe may I have a moment?

19 THE COURT: All right.

20 MS. DRAGAN: Is there anything still pending?

21 We don't have anything still pending to come back  
22 from them, but we haven't submitted anything for a while. It  
23 was taking months and months and months to do like 30 pages.

24 THE COURT: All right. And -- but you have -- you  
25 have received translations of discovery that's important to

1 your client?

2 MS. DRAGAN: Yes. And the Government, as they said,  
3 have provided their translations also of certain documents.

4 THE COURT: Right. And you've turned over to your  
5 client, basically, every communication you've read or you've  
6 received with respect to plea offers from the Government; is  
7 that correct?

8 MS. DRAGAN: Yes, Your Honor.

9 THE COURT: Okay. All right. Thank you very much.

10 Ms. Freter.

11 INTERPRETER KOVACEVIC: May we approach, Your Honor?

12 THE COURT: Just one second. Do you want to step up?

13 INTERPRETER KOVACEVIC: We would like just to know if  
14 you are --

15 THE COURT: You need to step to the podium there, and  
16 you can just -- your name is what?

17 INTERPRETER KOVACEVIC: Tanja Kovacevic.

18 THE COURT: And you're one of the two interpreters?

19 INTERPRETER KOVACEVIC: Yes, interpreters. We are  
20 wondering if you are going to need us or dismiss us.

21 THE COURT: Yes, I want you to stay until these  
22 proceedings are concluded.

23 INTERPRETER KOVACEVIC: Okay.

24 THE COURT: And your name is what, ma'am?

25 INTERPRETER ZOLLER-COCIC: Deanna Zoller.



1 THE COURT: All right. And so I don't want you to  
2 leave.

3 INTERPRETER KOVACEVIC: Okay.

4 INTERPRETER ZOLLER-COCIC: Okay.

5 THE COURT: All right. Thank you very much.

6 All right. Ms. Freter, let me ask you; what about  
7 the translation of information? You know, I take it you have  
8 received pretrial discovery of, you know, information.

9 MS. FRETER: And so, Judge, all of the pretrial  
10 discovery was done when Mr. D'Agrosa still had the case, and  
11 so by the time I was entered on the case, that whole process  
12 had gone on for some period of time. I have reviewed large  
13 quantities of what he has given me. In my communications with  
14 my client, I'm not under the impression, other than what the  
15 Government is going to disclose today, that we're seeking  
16 anything additional.

17 THE COURT: All right. And the information you have  
18 received that needed translation has been translated; is that  
19 true?

20 MS. FRETER: I would say to the best of my knowledge.  
21 I think because I came in so late I don't know. I can't sit  
22 here and tell you everything that needs to be translated is  
23 translated. I can tell you that I'm not currently seeking  
24 today any additional translations right now.

25 THE COURT: Okay. All right.

1 MS. FRETER: Thank you.

2 THE COURT: And you have turned over or you believe  
3 that your client has received all of the offers from the  
4 Government with respect to a plea agreement; is that right?

5 MS. FRETER: That's my understanding, yes.

6 THE COURT: Okay. Thank you very much.

7 Ms. Trog.

8 MS. TROG: Good afternoon.

9 THE COURT: Good afternoon. And you've been sort of  
10 the person fronting for the defense counsel at the Court's  
11 request earlier on. Is that a fair statement?

12 MS. TROG: Yes, sir, with the -- excuse me -- with  
13 the assistance of the Public Defender's Office who have been  
14 very, very helpful, Your Honor.

15 THE COURT: All right. Let me ask you; with respect  
16 to your client, you've received the Government's pretrial  
17 discovery of information disclosure, and I take it you would  
18 say yes; is that right?

19 MS. TROG: Yes, that is correct. And the Public  
20 Defender's Office was kind of enough to share all of their  
21 translations with us, which are important because so much is  
22 between our two clients. So I believe that we -- we have had  
23 an opportunity to review everything that's been out there to  
24 date, sir.

25 THE COURT: All right. And you have disclosed to

1 your client every communication that the Government has made  
2 with respect to a plea offer; is that right?

3 MS. TROG: Yes, Your Honor.

4 THE COURT: All right. Thank you very much.

5 MS. TROG: Okay. Thank you.

6 THE COURT: Ms. Miller. Good afternoon.

7 MS. MILLER: Good afternoon.

8 THE COURT: You've received pretrial disclosure of  
9 information from the Government; is that correct?

10 MS. MILLER: Yes, Your Honor.

11 THE COURT: Okay. And you have -- or have you -- are  
12 you satisfied with the extent of translation of -- on behalf  
13 of the Defendant of the information that you've received?

14 MS. MILLER: Yes, Your Honor. I don't need anything  
15 else translated.

16 THE COURT: All right. And you've disclosed to your  
17 client all of the offers or offer that the Government has made  
18 with respect to plea agreements; is that right?

19 MS. MILLER: Yes, Your Honor.

20 THE COURT: All right. Thank you very much.

21 MS. MILLER: Uh-huh.

22 THE COURT: Mr. Swift.

23 MR. SWIFT: Good afternoon, Your Honor.

24 THE COURT: Good afternoon. Do you have any  
25 translations that are left or materials that need to be

1 translated?

2 MR. SWIFT: I'm going to give you a yes and no answer  
3 on this, Your Honor. No, I didn't on December 23rd. On  
4 December 23rd, our center was hit by a ransomware attack,  
5 which we've reported to the FBI. An unfortunate event. Our  
6 IT and all support have indicated that no materials were  
7 compromised to the outside world. So it is all protected.  
8 Unfortunately, it's encoded. However, I refuse to negotiate  
9 with such persons as I believe this is a criminal act, and so  
10 we had to do it. Now, Mr. Drake has been extraordinarily  
11 helpful and will be giving us back -- you know, reissuing the  
12 discovery and all of that. At that time, I had identified no  
13 translation parts. In fact, we had the fewest conversations  
14 we had independent, and we got them fairly early on, and I  
15 don't believe that there are any, but I didn't check before  
16 this hearing because we're still in the process of rebuilding.  
17 So my answer on it is and if there was something, it would be  
18 very small. We -- again, we had the fewest conversations, and  
19 we've been -- the Public Defender has been very helpful in  
20 providing other materials.

21 THE COURT: Okay. And you have turned over to your  
22 client every communication from the Government that --

23 MR. SWIFT: My client and I have discussed potential  
24 plea offers from the Government on every occasion that the  
25 Government's made it, and we've discussed them in depth. As

1 Mr. Drake alluded to, an awful lot of it has been pending the  
2 combatant immunity issue.

3 THE COURT: Okay. Thank you very much.

4 Let me ask Ms. Trog. With respect to preparation for  
5 filing pretrial motions in this case, I did issue an order  
6 giving all of the parties on both sides until April 1st to  
7 file pretrial motions, and what is your response? I haven't  
8 gotten any objection to that or to the schedule that I filed.

9 MS. TROG: Well, we would like to see the results of  
10 the current motion before the Court on combatant immunity, and  
11 we would -- also are still awaiting the last discovery by the  
12 Government. We don't know if it's going to require FISA/CIPA  
13 motions. We just need to see exactly what the last tranche is  
14 of the discovery.

15 THE COURT: Okay.

16 MS. TROG: But we did talk among counsel before this  
17 hearing, Your Honor, and everyone is aware that you had set  
18 forth in your order of mid December, late December, sir, of  
19 the April 1st date as well as setting aside the weeks of  
20 August the 19th and 26th for the evidentiary hearings.

21 THE COURT: Right. Right. Do you have a response to  
22 what Ms. Trog said, Mr. Drake?

23 MR. DRAKE: Yes, Your Honor. Thank you.

24 THE COURT: Okay.

25 MR. DRAKE: Judge, I also looked at the Court's

1 order, and the Government has disclosed all arguably  
2 suppressible evidence that would be subject to suppression or  
3 other pretrial motions, at least in our opinion. The  
4 remaining discovery are miscellaneous matters that just in an  
5 abundance of caution we are turning over.

6 The only thing that I would bring to the Court's  
7 attention is that we've discussed matters like traditional  
8 Fourth Amendment suppression issues and other types of  
9 suppression issues. By the deadlines set here, the Government  
10 could respond to the traditional motions for suppression,  
11 whether that be a suppression of evidence, a search warrant, a  
12 statement, those types of things.

13 Should the defense move to suppress the surveillance  
14 that was conducted under the FISA Act that we've given notice  
15 of, that response from the Government takes a bit longer to  
16 respond to because we have to go to, essentially,  
17 cabinet-level positions to get virtual signatures from  
18 cabinet-level members and then request that the Court review  
19 in camera all of those materials. I think that in the Court's  
20 lengthy deadline for when those hearings could take place, we  
21 can meet that. I just don't know that our response on those  
22 types of issues would be met by the Court's earlier deadline.

23 And the last thing that I would direct the Court's  
24 attention to is, at the inception of this case, the Government  
25 filed a notice under Section 2 of the Classified Information

1 Procedures Act. At the conclusion of all of these motions,  
2 the Government would make its motion, as we alerted the Court  
3 to, under Section 2 of CIPA that we would request the Court  
4 conduct a CIPA hearing, and we would follow the procedures  
5 outlined in that act. That's not addressed in this, but I  
6 think we can still get that done, I believe, within the  
7 guidelines that are set here before any trial, Judge.

8 THE COURT: All right. To your perception, there is  
9 a substantial amount of material that the defense may be  
10 filing motions with respect to that would not be covered by  
11 the FISA or the security issues that you may seek to invoke?

12 MR. DRAKE: If I understand your question, I do  
13 understand that there is a significant amount of pretrial  
14 motions that they will be filing in order to attempt to  
15 suppress collection of the Government's evidence, yes, and we  
16 would be prepared to respond to those.

17 THE COURT: All right. Okay. What I'm planning on  
18 doing also is to amend the order that I -- the scheduling  
19 order that I had issued and require that -- with respect to  
20 the evidentiary hearing -- that before July 1, 2019, I want  
21 all of counsel for all the parties, the Government and  
22 defense, to confer and to come up with a proposed schedule of  
23 issues for presentation at the evidentiary hearing, whether  
24 it's by item of evidence or by witness, but to put it together  
25 so that, number one, everybody knows what's coming up and

1 everyone is prepared for their own case in that respect. So I  
2 will be doing that.

3 MR. DRAKE: Yes, sir, Your Honor.

4 THE COURT: All right. Thank you very much.

5 MR. DRAKE: Thank you.

6 MR. SWIFT: Your Honor, if I might --

7 THE COURT: Yes, sir.

8 MR. SWIFT: -- I have one potential issue on the part  
9 of the scheduling order. We're talking in the hypothetical  
10 about a superseding indictment, and of course, I haven't seen  
11 the language yet on the superseding indictment. So there  
12 might -- you know, depending on when that superseding  
13 indictment came down, you know, to challenge that indictment  
14 or any part of the indictment, and, you know, you know, to the  
15 extent that it renews old ground, one simply renews the  
16 motion, but to the extent that it opens up a new field, then  
17 we might need a little more time on the superseding. I agree  
18 that the evidence -- I don't think the evidence is going to be  
19 at all different, but I think that there would -- I can  
20 anticipate some challenges inside the part on it and,  
21 particularly, depending on language, the need for a bill of  
22 particulars on the next one.

23 THE COURT: Right. Well, okay. And I can understand  
24 that. I do not think that that should stand in the way of any  
25 motion to suppress evidence. The evidence, you know, how it



1 was acquired -- you know, that --

2 MR. SWIFT: Is independent of the charges. I just  
3 wanted to make that clear.

4 THE COURT: All right. Thank you very much.

5 All right. Now, I haven't gotten any objection, at  
6 least that I have perceived that was filed, with respect to  
7 the deposition issue. And are defense counsel prepared to  
8 discuss whether or not -- I had suggested federal government  
9 facilities, State Department facilities.

10 Mr. Swift, do you want to -- do you feel  
11 comfortable --

12 MR. SWIFT: Certainly. Mr. Drake and I, along with  
13 Ms. McDonald, had discussions pursuant to the Court's Order,  
14 and it was anticipated, in my other experiences, whether the  
15 defense part, that the Government, as we filed for the part,  
16 is willing to help facilitate but not grant access to the  
17 Embassy or to the Consulate, and that's pretty standard on the  
18 witness -- on the type of witnesses that we're calling. So we  
19 have -- and I would ask to speak in generalities for what one  
20 might call operational. I have no reason to believe that  
21 there's a threat, but behaving smartly prevents there from  
22 being a threat, and I think the Government is in complete  
23 agreement with these things, but we have secured an outside  
24 potential location with all -- and this was filed with the  
25 Court. I would have liked to have done it a little sooner,

1 but we got it in today. We've secured an outside location  
2 that is workable to all of the parties. It has, after doing  
3 research on it, sufficient Internet-type capabilities. We are  
4 able to contract for additional security. I think that's  
5 important because when the Consulate personnel leave the  
6 Consulate, they aren't in the same position to provide  
7 security when they leave, especially in a country like Bosnia,  
8 where they, you know, aren't allowed to be armed in part, I  
9 think. So we've arranged for security details for that. And  
10 then all of this, of course, comes at some cost, and even the  
11 U.S. Consulate personnel, but the good news on all of it is it  
12 can be done. It can be done at a relatively low level of  
13 expense. It is certainly far cheaper than sending everyone  
14 over there and certainly more convenient.

15 In the motion, we did suggest that Ms. McDonald be  
16 present there, and, perhaps, it was a misunderstanding. We  
17 never thought that she would swear the personnel. But long  
18 experience in both civil and criminal matters on these things  
19 is it really looks smooth until you get there, and then things  
20 have to be ironed out.

21 The Government also has indicated that they would  
22 have a couple of people present as well to make sure that  
23 things go well, and that's part on it. So that we would have  
24 all of those persons there. We would set up the links and all  
25 of that and test it in advance, and then we would be ready to

1 go, and we suggested some days in our motion for that that  
2 worked for everyone here.

3 Now, one of our -- what was not clear to us is  
4 whether Your Honor would preside over it or whether  
5 Judge Perry would preside over the deposition. So it was kind  
6 of tough to guess at people's schedules on the period of time  
7 for this.

8 THE COURT: Right. I am planning on presiding over  
9 it, and I would just tell you to avoid February 21 to 25.

10 MR. SWIFT: And we have done that.

11 THE COURT: Okay.

12 MR. SWIFT: So we have some suggested dates that are  
13 all possible on it. Our suggestion -- my practical  
14 suggestion -- not in the motion -- is to the extent that we  
15 start early is always better because if we have a technical  
16 glitch we're not at the end of the time.

17 THE COURT: Right.

18 MR. SWIFT: We're able to do it immediately on it.

19 The other suggestion that I had on it -- and this  
20 came from experience in a deposition I recently did in  
21 Pakistan. We started with all the wonderful tech, and then  
22 there was a bit of an Internet brownout, and so what we did  
23 was have a video camera still present to interview the witness  
24 and just stayed up on a telephone line.

25 THE COURT: Okay.

1 MR. SWIFT: You couldn't see the witness as they  
2 were, but we could hear it, and I think that that would be  
3 sufficient, not ideal, but sufficient --

4 THE COURT: Right.

5 MR. SWIFT: -- rather than -- so we're planning on  
6 videotaping it as well unless we're instructed not to.

7 THE COURT: No. I think whatever backup and  
8 redundant process you have -- you know, you can never have too  
9 many redundancies when you're dealing with digital, you know,  
10 processes.

11 MR. SWIFT: Absolutely. That's our part on it. The  
12 reason I bring that up is that, generally, you're not  
13 permitted to videotape court, you know, the proceedings, you  
14 know, without the Court's authorized permission.

15 THE COURT: Well --

16 MR. SWIFT: And that was not in our motion, but it  
17 was something we thought of afterwards that we hadn't asked.

18 THE COURT: All right. I do -- and the record will  
19 reflect that I do approve that procedure.

20 Mr. Drake.

21 MR. DRAKE: All right. Thank you, Judge.

22 Mr. Swift is correct. We've -- the Government -- we  
23 have been in extensive conversations with he and Ms. McDonald  
24 about how these depositions should proceed and what's  
25 necessary.

1           Just so the Court's aware -- and Mr. Swift alluded to  
2   it -- there is a filing that has some pretty concrete  
3   suggestions to the Court or advises the Court of what the  
4   parties' plans are. With the Court's permission, after  
5   reviewing that, what the Government would be required to do is  
6   as follows: Agents were over there before the holidays for  
7   about three weeks and coordinated with the Department of  
8   State, the Office of the Consular, the legal attaché office in  
9   Sarajevo, and a host of other Bosnian authorities. Our  
10   understanding is that all of what Mr. Swift said is doable.  
11   The Consular needs some specific answers to some specific  
12   questions that they have sent to the Government, and if the  
13   Court approves the plan that is submitted by Mr. Swift's  
14   office, we could answer those questions and move forward.  
15   With that in mind, the Consular's Office will put together a  
16   plan, hopefully, that is largely in accord with what we've  
17   agreed to. They will send the U.S. Government a cost for  
18   those services, and we will pay them at some point in time as  
19   well as the additional costs that the Court has ordered.

20           Mr. Swift is right; there is -- things change -- my  
21   understanding -- in Bosnia very regularly. So we're trying to  
22   be flexible because if we select a location that is not the  
23   Embassy, such as a hotel -- and I think that's what we have to  
24   do -- dignitaries or other officials could come, in which case  
25   the Consular's Office will put us on the back burner and walk

1 away from the proceedings, and we don't want that to happen.

2 So to the extent that we can have some flexibility, we will do

3 so, and I think that it can be accomplished on the dates and

4 times and locations that we've agreed to.

5 THE COURT: All right.

6 MR. DRAKE: And the Government has now started the

7 process of securing an ability to reimburse for those costs

8 that are associated with it.

9 THE COURT: All right. All right. So it's not going

10 to be -- how many government personnel are intending to be

11 present?

12 MR. DRAKE: Two. Well, it depends on what you mean

13 by "government," Judge. From the St. Louis area, two. Then

14 there would be a member of the Consular's Office who would

15 address the Court's needs, such as swearing in the

16 individuals. There would be an interpreter potentially

17 present at the scene as well as a stenographer and other

18 security officers as deemed necessary by the Embassy and the

19 regional security office and other officials that are on the

20 ground. They will endeavor to make it work for all of the

21 parties that are involved.

22 I would note, Judge, that while we've selected some

23 dates, there is a seven-hour time difference between Bosnia

24 and here. So we have to take that into account as well.

25 THE COURT: Surely. I'm willing to conduct that

1 proceeding, you know, at any time during the 24 hours in  
2 St. Louis, you know, open court in the middle of the night or  
3 whatever to facilitate the scheduling on-site.

4 MR. DRAKE: Yes, Your Honor.

5 MR. SWIFT: Yes, Your Honor. With the seven-hour  
6 delay, I actually think it will work best if we start really  
7 early. The principal part, on our part on it, is the Consular  
8 officers. That's always been my long pole in the tent because  
9 there is a very limited number of people who can swear someone  
10 inside the Consulate that we get, and their presence is  
11 necessary only to swear the person, and if we can -- and what  
12 I would suggest is that provided both our witnesses are there  
13 that they both be sworn at the same time so that the Consular  
14 officer can go home.

15 THE COURT: Right.

16 MR. SWIFT: And then they may be able to go farther  
17 into the afternoon or evening after that. We made that work  
18 in Pakistan on a couple of occasions.

19 THE COURT: All right. All right. I'll ask you to  
20 put all of that into a protocol that both sides agree. So  
21 we're back to two witnesses. I thought one witness.

22 MR. SWIFT: Well, we expect to have the other witness  
23 as well.

24 THE COURT: Oh, all right.

25 MR. SWIFT: We just cannot get -- there are places in

1 Bosnia -- he had indicated his willingness in all of this --  
2 that we can't make a phone call to. The last time when  
3 interviewed we didn't get a phone call. The investigator  
4 drove and went to the mountains and found him and all that  
5 sort of stuff. We expect to conduct that same part on -- in  
6 the process, and the investigator will get there a little  
7 early. We will very specifically reveal all things. You  
8 know, we'd pay for his costs to get there, inside the part,  
9 but apart from that, we wouldn't -- you know, we would reveal  
10 all of those things necessary, but generally, we're going to  
11 have to furnish transportation if he's still willing to come,  
12 and we would be absolutely disclosing exactly what this is,  
13 and our understanding from the Bosnian government is that it  
14 must be completely voluntary. In other words, he has to be  
15 told that it's voluntary, that he doesn't have to come, and  
16 that he's under no legal obligation to come, and that he would  
17 be subject to U.S. laws potentially were he to give false  
18 testimony, and that after that, the -- we have clearance to  
19 go, but all of those things will be delivered to him.

20 Now, as we said in our last report, we can't do  
21 that -- it didn't seem worth it once we had for sure one  
22 witness coming to spend significant resources to go try and  
23 find him in the middle of the winter without part because  
24 we'll do one and potentially two. My estimation -- I haven't  
25 looked at the 302s or not -- it's about four hours with



1 translation time. Would you agree?

2 MR. DRAKE: Yeah, I think so, Judge. Yeah, I think  
3 that's fair.

4 MR. SWIFT: I think about four hours per witness.

5 THE COURT: All right. That was going to be my next  
6 question.

7 MR. SWIFT: Yeah.

8 THE COURT: Okay. All right. Thank you both very  
9 much.

10 MR. DRAKE: Thank you, Your Honor.

11 THE COURT: All right. I'm just about to close my  
12 portion of the proceedings this afternoon. Does anyone on  
13 behalf of the Government need to make any further record about  
14 anything that we've talked about?

15 MR. DRAKE: No, sir, Your Honor. Thank you. I  
16 believe we're okay.

17 THE COURT: All right. Anyone from the defense?

18 MR. SWIFT: No, sir, Your Honor. Thank you.

19 THE COURT: All right. There will be just a brief  
20 recess, and then Judge Perry will preside. Thank you very  
21 much.

22 (Proceedings concluded at 2:41 p.m.)

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CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 25 inclusive.

Dated at St. Louis, Missouri, this 17th day of March, 2019.

*/s/ Gayle D. Madden*

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GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter